



JAN 31 2002

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, PC
Crystal Square Five, Fourth Floor
1755 Jefferson Davis Highway
Arlington, VA 22202

In re Application of :
DUWAT, Patrick, et al. :
U.S. Application No.: 09/508,514 :
PCT No.: PCT/IB99/01430 :
International Filing Date: 26 July 1999 :
Priority Date: 24 July 1998 :
Attorney's Docket No.: 0384-0049-0 PCT :
For: PROCESS FOR PREPARING STARTER :
CULTURES OF LACTIC ACID BACTERIA :
THIRD COMMUNICATION
REGARDING SUBMISSION
UNDER 37 CFR 1.42

In a communication mailed by this Office on 05 June 2001, applicants were informed that the declaration filed on 09 November 2000 was unacceptable under 37 CFR 1.42, even in light of the "Certificate of Heredity" submitted on 12 March 2001. Specifically, the communication stated that a revised declaration was required which identified either the legal representative of the deceased inventor's estate or, if no legal representative existed, then all the heirs of the deceased inventor (Anne Bravard and her minor children). The decision also noted that any revised declaration filed by applicants would have to comply with revised 37 CFR 1.497(b)(2), that is, the declaration would be required to include the residence, citizenship, and mailing address information for the legal representative (or each of the three heirs) **and** for the deceased inventor.

On 05 October 2001, applicants submitted a "Reply to Second Communication Regarding Submission Under 37 CFR 1.42" accompanied by a revised declaration and the petition and fee required for a two month extension of time. Based on the extension, the 05 October 2001 submission is considered a timely response to the 05 June 2001 Office communication.

The reply states that counsel has now been informed that Anne Bravard is, under French law, the legal representative of the deceased inventor's estate. Accordingly, only the signature of Anne Bravard is acceptable on behalf of the deceased inventor; the minor children (heirs, not legal representatives) need not be listed on the declaration.¹

The revised declaration filed on 05 October 2001 is executed by Anne Bravard as legal representative for the deceased inventor. Anne Bravard has also executed the declaration in the names of the two minor children heirs as legal representative of the deceased inventor. This was

¹ As noted in the 05 June 2001 communication, all heirs need be identified only if a legal representative does not exist.

not required, but does not render the declaration defective. However, while the revised declaration includes the residence, citizenship, and mailing address for the legal representative, it does not set forth the residence, citizenship, and mailing address for the deceased inventor, as also required under 37 CFR 1.497(b)(2) (see discussion in the 05 June 2001 communication). Accordingly, the revised declaration cannot be accepted under 37 CFR 1.497.

CONCLUSION

The submission under 37 CFR 1.42 and 37 CFR 1.497 is **DISMISSED** without prejudice.

Applicants have **two (2) months** from the mailing date of this Communication to submit a proper response under 37 CFR 1.42 and 37 CFR 1.497(b)(2). Failure to provide a proper and timely response will result in abandonment.

Extensions of time may be obtained under 37 CFR 1.136(a).

Please direct further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the International Division, Legal Staff.



Leonard Smith
PCT Legal Examiner
PCT Legal Office

RMR/LS:rnr



Richard M. Ross
PCT Petitions Attorney
PCT Legal Office
Telephone: (703) 308-6155
Facsimile: (703) 308-6459